

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

JUDITH THOMAS	*	CIVIL ACTION NO. 08-0863
VERSUS	*	JUDGE MELANÇON
CALCASIEU PARISH PUBLIC LIBRARY, ET AL	*	MAGISTRATE JUDGE HILL

REPORT AND RECOMMENDATION
ON MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Pending before the undersigned for report and recommendation is the Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted filed by defendants, Calcasieu Public Library, governed by the Calcasieu Parish Police Jury, and the Calcasieu Parish Police Jury (“Calcasieu”), on November 21, 3008 [rec. doc. 10]. Plaintiff, Judith Thomas (“Thomas”), has filed opposition. [rec. doc. 13]. Oral argument was held on December 17, 2008. For the following reasons, it is recommended that the motion be **DENIED**.

Background

Thomas filed this *pro se* discrimination action under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.* (“ADA”), against defendants on June 18, 2008. On October 7, 2008, Dan M. Sheuermann was enrolled as counsel of record for plaintiff. [rec. doc. 9]. On November 21, 2008, Calcasieu filed the instant

motion to dismiss the complaint on the grounds that Thomas failed to state a claim under the ADA because she asserted disability for only a temporary, and not a permanent, basis.

Analysis

After hearing the arguments of counsel, the undersigned learned that no discovery has been conducted in this case. Because plaintiff was proceeding *pro se* when the complaint was filed, and is now represented by counsel, the undersigned finds that she should be given the opportunity to amend her complaint to adequately state her claims, and that discovery proceed, as the issues brought in this motion to dismiss are more properly brought in a motion for summary judgment.

Accordingly, the undersigned recommends that the motion to dismiss be **denied**.

By separate Order, the plaintiff will be allowed until January 16, 2008, to file an amended complaint to plead claims under the Americans with Disabilities Act and Family Medical Leave Act of 1993.

Conclusion

Based on the foregoing reasons, the undersigned recommends that the Motion to Dismiss be **DENIED**.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and F.R.Civ.Proc. 72(b), parties aggrieved by this recommendation have ten (10) business days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FACTUAL FINDINGS AND/OR THE PROPOSED LEGAL CONCLUSIONS REFLECTED IN THIS REPORT AND RECOMMENDATION WITHIN TEN (10) DAYS FOLLOWING THE DATE OF ITS SERVICE, OR WITHIN THE TIME FRAME AUTHORIZED BY FED.R.CIV.P. 6(b), SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING THE FACTUAL FINDINGS OR THE LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT COURT, EXCEPT UPON GROUNDS OF PLAIN ERROR. *DOUGLASS V. UNITED SERVICES AUTOMOBILE ASSOCIATION*, 79 F.3D 1415 (5TH CIR. 1996).

Signed this 18th day of December, 2008, at Lafayette, Louisiana.


C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE